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September 14, 2006

Via E-Mail and U.S. Mail

Ms. Jessica Hecht
California Public Utilities Commission
Consumer Service & Information Division
505 Van Ness Avenue, 2nd Floor
San Francisco, CA 94102

Re: **Comments of Small and Mid-sized LECs on the Draft Report
Addressing Challenges Facing Consumers With Limited English
Skills in the Rapidly-Changing Telecommunications Marketplace**

Dear Ms. Hecht:

In accordance with your September 8, 2006 email notice, the Small and Mid-sized LECs¹ offer these comments on the Draft Report Addressing Challenges Facing Consumers With Limited English Skills in the Rapidly-Changing Telecommunications Marketplace ("Draft Report"). These comments also respond to issues raised during the August 24, 2006 Workshop ("Workshop"), and in parties' prior comments on the Study Plan that gave rise to the Draft Report. The Small and Mid-sized LECs do not have comments on all of the factual findings and policy options in the Draft Report. Rather, these comments focus on the general manner in which the Commission will use the Draft Report, and on some of the immediate, short-term, and long-term recommendations outlined therein.

¹ The Small LECs and Mid-Sized LECs are the following carriers: Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Citizens Telecommunications Company Of California (U 1024 C) d/b/a Frontier Communications of California, Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Global Valley Networks, Inc. (U 1008 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), SureWest Telephone (U 1015 C), The Siskiyou Telephone Company (U 1017), Volcano Telephone Company (U 1019 C), and Winterhaven Telephone Company (U 1021 C).

The Draft Report should be used to inform the Commission's reforms of its own procedures, and to help guide the Commission's consumer education and enforcement efforts, consistent with the policies in D.06-03-013; it should not be a platform for passing additional prescriptive rules addressing carriers' policies for dealing with customers "in language." The Draft Report provides a useful summary of California's ethnic and linguistic demographics, and of the current industry and Commission practices with respect to limited English proficiency ("LEP") individuals. However, the Draft Report does not link these data to any specific language-related problems that might necessitate new "in language" regulations. As the Small and Mid-sized LECs demonstrated in their comments on the Study Plan, there is already extensive law governing carriers' practices for communicating with consumers "in language."² The Commission should concentrate on empowering consumers by better informing them of their rights, and on policing fraudulent business practices aimed at LEP consumers by enforcing existing law.

While it appears that some LEP consumers do experience difficulties in the California telecommunications market, there is no reason to believe that these apparent problems could or should be solved by imposing additional "in language" requirements on the industry. Based on the Draft Report, the Workshop discussions, and some of the consumer groups' comments on the Study Plan, there are certain segments of the California population that find it difficult to communicate with carriers and/or the Commission. This phenomenon may relate in part to limited English proficiency, but it also implicates some larger societal and cultural issues, including poverty, illiteracy (in any language), fears regarding communications with government agencies, and perceived associations between telecommunications providers and the government. To the extent that these issues can be addressed by this Commission, they are best confronted through consumer education, by improving the Commission's processes for communicating with LEP consumers, and by fostering greater coordination between consumers, the Commission, Community-Based Organizations ("CBOs"), and carriers.

The presentations during the workshops also indicate that some LEP consumers have been the targets of fraudulent schemes. To the extent that carriers are engaged in fraudulent or misleading behavior toward consumers, whether aimed at LEP consumers or otherwise, these practices are forbidden under current law. As noted in the Small and Mid-sized LECs' comments on the Study Plan, existing law already includes a wide variety of general consumer remedies and telecommunications-specific protections addressing carriers' practices relative to LEP consumers. The current rules are flexible and appropriately sensitive to carrier-specific differences. These authorities provide ample tools for the Commission and other law enforcement agencies to identify and root out unscrupulous behavior. The twin policy goals of

² See *Comments of the Small and Mid-sized LECs on Study Plan on Language Access Issues*, dated July 14, 2006. As a reference, these previous comments are attached hereto as Exhibit A.

consumer education and enforcement of existing law should guide the Commission's analysis of the "in language" issues raised in the Draft Report.

With these general principles in mind, the Small and Mid-sized LECs offer the following specific comments on the recommendations in the Draft Report:

1. *There is No Urgent Need for Reconciliation of Terminology in Current Rules (Immediate Action #1)* – The first recommendation for immediate action suggests that the Commission should "reconcile the language requirements in the various Commission decisions, and also in its programs that have different language requirements" *Draft Report*, at p. ii. As this statement acknowledges, there are a variety of existing rules addressing carriers' "in language" practices. In large part, these requirements are already consistent, and the occasional semantic differences in these requirements are no cause for a comprehensive review. Moreover, to the extent that disparate terminology does point to significant policy distinctions, many of these distinctions are necessary to preserve flexibility in the current requirements. It is important that any "in language" consumer education materials prepared as part of the Commission's ongoing consumer education effort correctly reflect the state of existing law. The Commission should also be cognizant of the current rules in framing its internal protocols. However, there is no urgent need to retroactively harmonize all of the various Commission decisions addressing "in language" requirements at this time.

2. *The "Office Hours" Proposal Should be Further Clarified (Immediate Action #5)* – The fifth recommendation for immediate action proposes that carriers, CBOs, and the Commission should coordinate in offering "office hours" throughout the state. *Draft Report*, at p. iii. The Draft Report should provide further details regarding what would take place at these "office hours," and what roles each of the stakeholders might play in the process. For example, where would these meetings take place? How often would they occur? What type of activities would take place? Absent further certainty regarding this proposal, it is unclear whether the Small and Mid-sized LECs would support it. Further input from the interested parties should be solicited if the Commission intends to pursue this "office hours" proposal.

3. *The "Rapid Referral" Proposal Should be Further Clarified (Immediate Action #6)* – The Draft Report should also clarify the sixth recommendation for immediate action. This proposal suggests that a procedure be put in place to "rapidly refer cases of suspected fraud, marketing abuse, and other possible violations involving in-language marketing and customer service" to the Commission's new Fraud Unit. *Draft Report*, at p. iv. If properly formulated, this procedure could be an effective tool to help the Commission fulfill its enforcement role relative to LEP consumers. However, if this recommendation is pursued, the Commission should ensure that suspected violators are afforded due process, and that sufficient oversight is put in place to ensure that "rapid referral" does not equate to a rush to judgment or a presumption of guilt. Moreover, CBOs could play some role in this process, but the Commission should exercise the ultimate decision-making authority regarding which allegations to pursue.

Interested parties should be given a further opportunity to comment on this proposal if the Commission intends to pursue it.

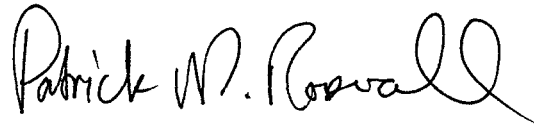
4. *The Commission Should Pursue Informal Collaborative Solutions, Consumer Education Efforts, and Enforcement Actions Rather than Promulgating New Rules or Regulations Addressing "In Language" Issues (Short Term Action #1)* – As the Commission recognized in D.06-03-013, consumer education and enforcement are more appropriate ways to protect consumers than prescriptive rules. Consistent with that policy determination, the Commission should not rush to legislate in the "in language" arena until it is clear that enforcement efforts, consumer education, outreach, and other informal and/or voluntary carrier actions are not effective in addressing the needs of LEP consumers. Indeed, the "rapid referral" process in immediate action item #6 and the "Regulatory Complaint Resolution Forum" proposal in short term action item #3 are the types of proposals that the Commission should be pursuing absent a clear need for additional regulations. The Draft Report has not shown any compelling need for additional rules addressing "in language issues," so no plan to open a formal proceeding should be pursued at this time.

* * *

The Small and Mid-sized LECs appreciate the opportunity to comment on the Draft Report, and urge the Commission to consider the above perspectives as it finalizes the Draft Report. If the Commission intends to pursue any of the specific recommendations noted in the Draft Report, further opportunities for comment should be provided on how those proposals should be implemented. Should you have any questions regarding the foregoing, please contact the undersigned at (415) 765-0369, or by email at prosvall@cwclaw.com.

Very truly yours,

COOPER, WHITE & COOPER LLP



Patrick M. Rosvall
Attorneys for Small & Mid-sized LECs

PMR:ncg
Enclosure

cc: (via email) Current Distribution List for CPI LEP Report Project
as provided by Jessica Hecht in her email of September 8, 2006

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EXHIBIT A

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July 14, 2006

By E-Mail and U.S. Mail

Ms. Jessica Hecht
jhe@cpuc.ca.gov
CPUC—Consumer Service and Information Division, 2nd Floor
505 Van Ness Avenue
San Francisco, CA 94102

**Re: *Consumer Protection – "In Language" Phase
Comments of the Small and Mid-sized LECs on
Study Plan on Language Access Issues***

Dear Ms. Hecht:

In accordance with the procedural schedule outlined during the June 26, 2006 workshop, the Small and Mid-sized LECs¹ offer these comments on the Study Plan on Language Access Issues For California Telecommunications Consumers ("Study Plan"). The Small and Mid-sized LECs have reviewed the Study Plan, and each of the questions upon which the Commission is seeking comment. In general, the Study Plan provides a useful blueprint for the Commission to follow in complying with the directive of Commission Decision 06-03-013 that the Commission "perform a study of the special needs of and challenges faced by California telecommunications consumers with limited proficiency in English (LEP consumers)."

The Small and Mid-sized LECs do not have extensive comments on all aspects of the Study Plan, and these comments do not address each of the questions identified therein. However, the Small and Mid-sized LECs offer the following comments on issues of particular importance raised in the Study Plan, and in the discussion during the June 26, 2006 workshop.

¹ The Small LECs and Mid-Sized LECs are the following carriers: Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Citizens Telecommunications Company Of California (U 1024 C) d/b/a Frontier Communications of California, Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Global Valley Networks, Inc. (U 1008 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), SureWest Telephone (U 1015 C), The Siskiyou Telephone Company (U 1017), Volcano Telephone Company (U 1019 C), and Winterhaven Telephone Company (U 1021 C)

First, the Study Plan appropriately focuses on ways in which the Commission can improve its own practices to better serve LEP consumers, and to better educate LEP consumers about telecommunications issues. Second, consistent with the general consumer protection policy embodied in D.06-03-013, the Commission should focus on consumer education and enforcement of existing law rather than passing new prescriptive rules to address carriers' practices toward LEP consumers. Third, under current law, carriers' obligations to provide "in language" services are only triggered by specific marketing or sales practices, such that carriers can choose whether they wish to incur these obligations, in light of the populations that they serve and their particular business models. Each of these issues is addressed in further detail below.

The Commission Should Examine its Own Practices to Ensure that it is Properly Equipped to Meet the Needs of LEP Consumers

The Small and Mid-sized LECs support the Commission's efforts to improve the ways in which the Commission communicates with LEP consumers. The Study Plan appropriately asks whether the "existing processes of the Commission's Consumer Affairs Branch" are "serving the needs of LEP consumers." *Study Plan*, at p. 6. This is an important inquiry, as the Commission can act as a vital source of information and guidance for these consumers. Similarly, the Study Plan considers whether additional educational tools could be employed to facilitate Commission outreach to LEP consumers. The current consumer education phase of the Consumer Protection Initiative will go a long way toward fulfilling this educational goal, but this Study may uncover additional ways in which the Commission could be responding to the needs of LEP consumers. The Commission can fulfill an important public function in providing broad-based telecommunications information to these consumers, and in responding to their specific inquiries and issues in a streamlined and targeted manner. The Study Plan will help guide the Commission toward that goal.

There is No Need for Additional Rules Governing Carriers' Interactions with LEP Consumers

In D.06-03-013, the Commission concluded that consumer education and enforcement of existing law is a more appropriate way to protect consumers than "one-size-fits-all" regulations. With its focus on "educational needs to ensure language access" and "enforcement activities to provide consumer protection," the Study Plan is consistent with this general policy. Given the many differences between carriers, and the great diversity in the populations served by those carriers, it would be inappropriate to legislate particular carrier practices for interacting with LEP consumers. Rather, the Commission should focus on making LEP consumers aware of their rights, and on ensuring that these consumers do not suffer abuses under current law.

Indeed, California and federal law already include significant authority governing carriers' interactions with LEP consumers. Public Utilities Code Section 2890(b) provides that any "written or oral solicitation materials used to obtain an order for a product or service shall be

in the same language as the written order.” General Order 153 requires utilities to provide ULTS notices and offer toll-free customer service in any languages in which they “sell” ULTS. G.O. 153 § 4.6. Public Utilities Code Section 2889.5(a)(6) provides that “authorizations” to change telecommunications service providers must be “in language” if the authorizations are accompanied by other “in language” materials. Pub. Util. Code § 2889.5(a)(6). FCC regulations require that “opt out” notices regarding the use of Customer Proprietary Network Information (“CPNI”) cannot be translated partially into another language. 47 C.F.R. § 64.2008(c)(6). Similar restrictions are in place with regard to Letters of Agency (“LOAs”) and Third Party Verification (“TPV”) practices used to authorize changes in provider. *See* 47 C.F.R. § 64.1120(c)(3)(iv) (TPV calls must be in the same language as the underlying sales transaction); 47 C.F.R. § 64.1120(h) (LOAs cannot be partially translated).

Current law also includes a number of carrier-specific requirements and protections applicable to particular service offerings. CPUC Decision 96-10-076 outlines specific “in language” requirements for CLECs and large ILECs to the extent that they are “selling” their services in one or more of seven designated non-English languages (Spanish, Mandarin, Cantonese, Vietnamese, Korean, Japanese, and Tagalog). *See* D.96-10-076, Appendix. Similarly, D.98-08-031 contains “in language” protections specific to detariffed Non-Dominant Interexchange Carriers (“NDIECs”). *See* D.98-08-031, Appendix A, Rule 3(d). Moreover, current law imposes specific restrictions on “in language” practices relative to prepaid calling cards, providers of 900 number services, and commercial wireless text messages. *See* Cal. Bus. & Prof. Code § 17538.9(b)(4), (5) (prepaid calling card disclosures must be in same languages as advertising or promotional materials); Cal. Bus. & Prof. Code § 17539 (900 number services advertisements should be in the same language that will be used on the call); 16 C.F.R. 308.3(a)(1) (pay-per-call service disclosures should be in the same language as advertisements for the service); 47 C.F.R. § 64.3100(d)(6) (disclosures in authorization to receive commercial wireless text messages must be in same language as the authorization generally).

Even setting aside the federal and state “in language” protections that are specific to the telecommunications arena, there are many provisions in general California law that help protect LEP consumers against unfair business practices. Notably, California Business and Professions Code Section 17200 prohibits any business practice that is unfair, unlawful, or deceptive. Numerous contract law and fraud concepts also protect LEP consumers from abuse. *See, e.g., Nicholas v. Harger-Haldeman*, 196 Cal.App.2d 77 (1961) (contract voidable where party to contract does not read English, written document is in English, and other party misrepresents the contents of the contract).

As the above summary illustrates, current law provides a number of mechanisms to prevent abuse against LEP consumers. These existing protections are sufficient to address the challenges faced by these customers in the telecommunications marketplace. To the extent that Commission enforcement is necessary to curb abuse, the Commission has ample authority through which to pursue such enforcement actions. In general, however, the Small and Mid-

Ms. Jessica Hecht
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sized LECs continue to believe that consumer education is the best way to protect LEP consumers.

The Study Plan Should Recognize the Importance of Carrier-Specific Flexibility in Meeting the Needs of the Particular Populations that Those Carriers Serve

In conducting the study outlined in the Study Plan, it will be important for the Commission to understand that a carrier's policy for interacting with LEP consumers will naturally differ according to the carrier's particular business model, and according to the needs identified in carrier's target customer base. California carriers serve a wide variety of different populations, and these carriers have geared their practices to cater to the interests of those populations. While the largest carriers in California may serve millions of LEP customers, some of the small and mid-sized carriers serve very few LEP customers, if any. In light of these differences, what may be an appropriate policy for a large carrier serving a significant LEP consumer population may not be reasonable or cost-justified in the context of a much smaller carrier serving a limited LEP population.

The current law recognizes these differences through reliance on a series of flexible "in language" requirements, many of which are inapplicable if carriers are not actively "selling" or "soliciting" in languages other than English. As the Commission moves forward in fulfilling the goals of the Study Plan, it will be critical to ensure that the rules continue to be interpreted in this flexible manner.

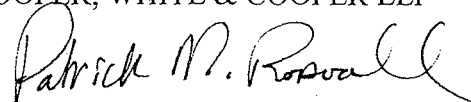
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The Small and Mid-sized LECs support the Study Plan's focus on enforcement, consumer education, and improving the Commission's practices for interacting with LEP consumers. The Small and Mid-sized LECs appreciate the opportunity to comment on the Study Plan, and look forward to working with the Commission as this proceeding moves forward.

Should you have any questions regarding the foregoing, please contact the undersigned at (415) 765-0369, or by email at prosvall@cwclaw.com

Very truly yours,

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